

Appl. No. 10/806,743

REMARKS

Claims 1-16 are pending in the above-identified patent application. Claims 1-12 and 14-16 are rejected. Applicants appreciate the indication that Claim 13 contains allowable subject matter. Claim 13 has been amended, and new Claims 17 and 18 are submitted for consideration by the Examiner (e.g., Claim 17 corresponds to Claim 13 rewritten in independent form). Applicants respectfully request reconsideration and allowance of the pending claims.

Applicants have no further information on the status of the application listed on Page 9, Paragraph 27. If the Examiner can provide such information, Applicants will update the instant specification.

The rejection of Claims 1-4, 9-12 and 15 under 35 U.S.C. 102(b) as being anticipated by Westfall et al. (U.S.P.N. 6,515,787 B1), is respectfully traversed.

Applicants respectfully submit that Westfall does not disclose using plasma enhanced chemical vapor deposition before or after another deposition method. That is, Westfall et al discloses that either technique can be used, but not both in the same production process.

Col. 4, Lines 53-58 of Westfall disclose:

The invention is also incorporated into the method of forming the improved electrochromic device wherein at least one of the layers is deposited by vacuum deposition. In another example of the invention, at least one of the layers is deposited by plasma enhanced chemical vapor deposition (PECVD).

Westfall et al discloses that vacuum deposition and PECVD processes are used for separate examples of their invention.

Col. 6, Lines 6-8 of Westfall disclose:

tion. The method of forming the improved electrochromic device 10 includes at least one of the layers being deposited by vacuum deposition or by plasma enhanced chemical vapor deposition (PECVD).

Westfall et al uses "or" when referring to vacuum deposition and PECVD. That is, either vacuum deposition is used or PECVD is used, but not both in the same production process.

Westfall, therefore, does disclose each and every aspect of the claimed invention and cannot anticipate the claimed invention. Applicants respectfully request withdrawal of this rejection.

The rejection of Claims 5-8, 14 and 16 under 35 U.S.C. 103(a) as being unpatentable over Westfall et al. in view of Van Dine et al. (U.S.P.N. 5,659,417), is respectfully traversed.

Westfall contains the aforementioned deficiencies. These deficiencies are not remedied by Van Dine. Westfall discloses that hydroxyl radicals are undesirable (e.g., Col. 7,

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Lines 38-45 of Westfall). In contrast, Van Dine indicates that the presence of hydroxyl is acceptable (e.g., Col. 3, Line 65 through Col. 4, Line 14 of Van Dine). Such mutually exclusive application of hydroxyl groups illustrates that Westfall and Van Dine teach away from each other. A skilled person in this art would not consider one process that excludes hydroxyls as being compatible or analogous to a process that includes hydroxyls. Accordingly, Applicants respectfully submit that a skilled person in this art would lack the requisite motivation to combine these references and these references cannot establish a prima facie case of obviousness.

Applicants respectfully request issuance of a Notice of Allowability for the pending Claims. Please find attached hereto a Petition for a Three Month Extension of Time. Should there be any other fee due in connection with this Application, please charge the same to Deposit Account No. 01-0493 (Air Products). Should the Examiner deem that any action on the part of Applicants would advance prosecution, the Examiner is invited to telephone Applicants' attorney.

Respectfully Submitted,



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Encl: Petition For Three Month Extension of Time
Certificate of Facsimile Dated: April 04, 2006